

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CENTER FOR BIOLOGICAL DIVERSITY;
DEFENDERS OF WILDLIFE; ANIMAL LEGAL
DEFENSE FUND,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States of America, *et al.*,

Defendants.

Civil Action No. 19-CV-00408 (TNM)

RIO GRANDE INTERNATIONAL STUDY
CENTER (RGISC), *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States of America, *et al.*,

Defendants.

Civil Action No. 19-CV-00720 (TNM)

UNITED STATES HOUSE OF
REPRESENTATIVES,

Plaintiff,

v.

STEVEN T. MNUCHIN, in his official capacity as
Secretary of the Treasury, *et al.*,

Defendants.

Civil Action No. 19-CV-00969 (TNM)

**SUPPLEMENTAL NOTICE OF DECISION BY THE DEPARTMENT OF DEFENSE TO
AUTHORIZE ADDITIONAL BORDER BARRIER PROJECTS PURSUANT TO
10 U.S.C. § 284**

Defendants hereby notify the Court and parties in the above-captioned cases that the Department of Defense has decided not to undertake at this time the three additional border barrier projects identified in Defendants' August 27, 2019 Notice. *See* ECF No. 36 in 19-CV-00408; ECF No. 46 in 19-CV-00720; and ECF No. 66 in 19-CV-00969.

Defendants' August 27, 2019 Notice explained that in the course of executing the contracts for the previously-approved Section 284 projects that have been the subject of litigation in these cases, the U.S. Army Corps of Engineers (USACE) determined that that lower-than-expected contract costs may yield sufficient savings to build up to an additional 20 miles of border barrier. *See id.* The Notice stated that USACE would not know the precise amount available until later in the fiscal year when USACE finalizes all contract pricing. *Id.* Based on this expected contract savings, on August 26, 2019, the Secretary of Defense authorized USACE to undertake three additional border barrier projects, as those funds allow: Yuma Sector Projects 4 and 5, and Tucson Sector Project 4. *See id.*

Based on its work in definitizing the contracts for the original Section 284 projects, USACE has determined that there are insufficient contract savings to undertake the three additional Section 284 projects authorized by the Secretary of Defense on August 26, 2019. *See* Fifth Declaration of Kenneth Rapuano ¶ 4 (Exhibit 1). Therefore, the Department of Defense has decided not to pursue Yuma Sector Projects 4 and 5, and Tucson Sector Project 4 at this time. *See id.*

Dated: September 16, 2019

Respectfully submitted,

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Deputy Assistant Attorney General

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/s/ Andrew I. Warden
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EXHIBIT 1

FIFTH DECLARATION OF KENNETH P. RAPUANO

SEP 13 2019

I, KENNETH P. RAPUANO, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Assistant Secretary of Defense for Homeland Defense and Global Security (ASD(HD&GS)). Among other duties, which are generally reflected in Department of Defense (DoD) Directive 5111.13, I am responsible for developing, coordinating, and overseeing implementation of DoD policy for plans and activities related to defense support of civil authorities. On April 5, 2018, the Secretary of Defense designated the ASD(HD&GS) to manage the then-newly established DoD Border Security Support Cell. The DoD Border Security Support Cell is the focal point and integrator for all requests for assistance, taskings, and information related to DoD support pursuant to the President's April 4, 2018, memo, "Securing the Southern Border of the United States."

2. This declaration is based on my own personal knowledge and information made available to me in the course of my official duties.

3. In my fourth declaration, dated August 26, 2019, I stated that, in the course of executing contracts for the seven approved Section 284 projects, the U.S. Army Corps of Engineers (USACE) determined that lower-than-expected contract costs may yield sufficient savings to build up to an additional 20 miles of border barrier. Based on this expected contract savings and an amended request for assistance under Section 284 from the Department of Homeland Security, on August 26, 2019, the Secretary of Defense authorized USACE to use any excess funds resulting from contract savings on the previously approved \$2.5 billion in Section 284 projects to undertake three additional border barrier construction projects.

4. I have been informed by USACE that, based on its work in definitizing contracts for the original seven Section 284 projects, there are insufficient contract savings to undertake the three additional projects authorized by the Secretary of Defense on August 26, 2019. Therefore, the Department has decided not to pursue Yuma Sector Projects 4 and 5 and Tucson Sector Project 4 at this time.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on: September 13, 2019


KENNETH P. RAPUANO